

Todd M. Friedman (SBN 216752)
Suren N. Weerasuriya (SBN 278521)
Adrian R. Bacon (280332)
LAW OFFICES OF TODD M. FRIEDMAN,
P.C.
324 S. Beverly Dr., #725
Beverly Hills, CA 90212
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@attorneysforconsumers.com
sweerasuriya@attorneysforconsumers.com
abacon@attorneysforconsumers.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JONATHAN WEISBERG, individually)	Case No.
and on behalf of all others similarly)	
situated,)	<u>CLASS ACTION</u>
)	
Plaintiff,)	COMPLAINT FOR VIOLATIONS
)	OF:
vs.)	
)	1. NEGLIGENT VIOLATIONS
KENSINGTON PROFESSIONAL)	OF THE TELEPHONE
AND ASSOCIATES LLC,)	CONSUMER PROTECTION
)	ACT [47 U.S.C. §227 ET
)	SEQ.]
Defendants.)	2. WILLFUL VIOLATIONS
)	OF THE TELEPHONE
)	CONSUMER PROTECTION
)	ACT [47 U.S.C. §227 ET
)	SEQ.]
)	<u>DEMAND FOR JURY TRIAL</u>
)	
)	
)	

Plaintiff, JONATHAN WEISBERG (“Plaintiff”), individually and on behalf
of all others similarly situated, alleges the following upon information and belief

1 based upon personal knowledge:

2
3 **NATURE OF THE CASE**

4 1. Plaintiff brings this action individually and on behalf of all others
5 similarly situated seeking damages and any other available legal or equitable
6 remedies resulting from the illegal actions of KENSINGTON PROFESSIONAL
7 AND ASSOCIATES LLC, (“Defendant”), in negligently, knowingly, and/or
8 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the
9 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby
10 invading Plaintiff’s privacy.

11 **JURISDICTION & VENUE**

12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
13 a resident of California, seeks relief on behalf of a Class, which will result in at
14 least one class member belonging to a different state than that of Defendant, a
15 company with its principal place of business and State of Incorporation in Florida
16 state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of
17 the TCPA, which, when aggregated among a proposed class in the thousands,
18 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
19 diversity jurisdiction and the damages threshold under the Class Action Fairness
20 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Central
22 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
23 because Defendant does business within the state of California and the county of
24 Los Angeles.

25 **PARTIES**

26 4. Plaintiff, JONATHAN WEISBERG (“Plaintiff”), is a natural person
27 residing in Los Angeles, California and is a “person” as defined by 47 U.S.C. § 153
28 (10).

1 5. Defendant, KENSINGTON PROFESSIONAL AND ASSOCIATES
2 LLC (“Defendant”), is a leader in providing student loan repayment advice and
3 support, and is a “person” as defined by 47 U.S.C. § 153 (10).

4 6. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the DOE Defendants when
11 such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, each and
13 every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiff is informed and believes that each of the acts and/or omissions complained
17 of herein was made known to, and ratified by, each of the other Defendants.

18 **FACTUAL ALLEGATIONS**

19 8. Beginning in or around October of 2012, Defendant contacted
20 Plaintiff on his cellular telephone, (310) 880-2922, in an attempt to solicit
21 Defendant’s services to Plaintiff.

22 9. Defendant placed multiple calls in a single day, to Plaintiff’s cellular
23 telephone.

24 10. Defendant used an “automatic telephone dialing system”, as defined
25 by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff.

26 11. Defendant’s calls constituted calls that were not for emergency
27 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

28 12. Defendant’s calls were placed to telephone number assigned to a

1 cellular telephone service for which Plaintiff incurs a charge for incoming calls
2 pursuant to 47 U.S.C. § 227(b)(1).

3 13. Plaintiff is not a customer of Defendant United services, have never
4 provided any personal information, including his cellular telephone number, to
5 Defendant for any purpose whatsoever, nor has Plaintiff purchased or used any
6 goods or services offered by Defendant United at any time prior to the filing of the
7 instant Complaint. Accordingly, Defendant never received Plaintiff's "prior
8 express consent" to receive calls using an automatic telephone dialing system or an
9 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
10 227(b)(1)(A).

11 **CLASS ALLEGATIONS**

12 14. Plaintiff brings this action on behalf of himself and all others similarly
13 situated, as a member of the proposed class (hereafter "The Class") defined as
14 follows:

15 All persons within the United States who received any
16 solicitation or telemarketing telephone calls from
17 Defendant to said person's cellular telephone made
18 through the use of any automatic telephone dialing
19 system and such person had not previously consented to
20 receiving such calls within the four years prior to the
filing of this Complaint

21 15. Plaintiff represents, and is a member of, The Class, consisting of all
22 persons within the United States who received any solicitation or telemarketing
23 telephone calls from Defendant to said person's cellular telephone made through
24 the use of any automatic telephone dialing system and such person had not
25 previously not provided their cellular telephone number to Defendant within the
26 four years prior to the filing of this Complaint.

27 16. Defendant, its employees and agents are excluded from The Class.
28 Plaintiff does not know the number of members in The Class, but believes the Class

1 members number in the thousands, if not more. Thus, this matter should be
2 certified as a Class Action to assist in the expeditious litigation of the matter.

3 17. The Class is so numerous that the individual joinder of all of its
4 members is impractical. While the exact number and identities of The Class
5 members are unknown to Plaintiff at this time and can only be ascertained through
6 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
7 The Class includes thousands of members. Plaintiff alleges that The Class
8 members may be ascertained by the records maintained by Defendant.

9 18. Plaintiff and members of The Class were harmed by the acts of
10 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
11 and Class members via their cellular telephones thereby causing Plaintiff and Class
12 members to incur certain charges or reduced telephone time for which Plaintiff and
13 Class members had previously paid by having to retrieve or administer messages
14 left by Defendant during those illegal calls, and invading the privacy of said
15 Plaintiff and Class members.

16 19. Common questions of fact and law exist as to all members of The
17 Class which predominate over any questions affecting only individual members of
18 The Class. These common legal and factual questions, which do not vary between
19 Class members, and which may be determined without reference to the individual
20 circumstances of any Class members, include, but are not limited to, the following:

- 21 a. Whether, within the four years prior to the filing of this
22 Complaint, Defendant made any collection call (other than a
23 call made for emergency purposes or made with the prior
24 express consent of the called party) to a Class member using
25 any automatic telephone dialing system to any telephone
26 number assigned to a cellular telephone service;
- 27 b. Whether Plaintiff and the Class members were damages
28 thereby, and the extent of damages for such violation; and

1 c. Whether Defendant should be enjoined from engaging in such
2 conduct in the future.

3 20. As a person that received numerous collection calls from Defendant
4 using an automatic telephone dialing system, without Plaintiff's prior express
5 consent, Plaintiff is asserting claims that are typical of The Class.

6 21. Plaintiff will fairly and adequately protect the interests of the members
7 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
8 class actions.

9 22. A class action is superior to other available methods of fair and
10 efficient adjudication of this controversy, since individual litigation of the claims
11 of all Class members is impracticable. Even if every Class member could afford
12 individual litigation, the court system could not. It would be unduly burdensome
13 to the courts in which individual litigation of numerous issues would proceed.
14 Individualized litigation would also present the potential for varying, inconsistent,
15 or contradictory judgments and would magnify the delay and expense to all parties
16 and to the court system resulting from multiple trials of the same complex factual
17 issues. By contrast, the conduct of this action as a class action presents fewer
18 management difficulties, conserves the resources of the parties and of the court
19 system, and protects the rights of each Class member.

20 23. The prosecution of separate actions by individual Class members
21 would create a risk of adjudications with respect to them that would, as a practical
22 matter, be dispositive of the interests of the other Class members not parties to such
23 adjudications or that would substantially impair or impede the ability of such non-
24 party Class members to protect their interests.

25 24. Defendant has acted or refused to act in respects generally applicable
26 to The Class, thereby making appropriate final and injunctive relief with regard to
27 the members of the California Class as a whole.

28 ///

1 **FIRST CAUSE OF ACTION**

2 **Negligent Violations of the Telephone Consumer Protection Act**

3 **47 U.S.C. §227 et seq.**

4 25. Plaintiff repeats and incorporates by reference into this cause of
5 action the allegations set forth above at Paragraphs 1-24.

6 26. The foregoing acts and omissions of Defendant constitute numerous
7 and multiple negligent violations of the TCPA, including but not limited to each
8 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

9 27. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
10 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
11 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

12 28. Plaintiff and the Class members are also entitled to and seek
13 injunctive relief prohibiting such conduct in the future.

14 **SECOND CAUSE OF ACTION**

15 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
16 **Act**

17 **47 U.S.C. §227 et seq.**

18 (Against All Defendants)

19 29. Plaintiff repeats and incorporates by reference into this cause of
20 action the allegations set forth above at Paragraphs 1-28.

21 30. The foregoing acts and omissions of Defendant constitute numerous
22 and multiple knowing and/or willful violations of the TCPA, including but not
23 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
24 *seq.*

25 31. As a result of Defendant's knowing and/or willful violations of *47*
26 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
27 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
28 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

- Any and all other relief that the Court deems just and proper.

•

Respectfully Submitted this 30th Day of October, 2015.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff